
UTAH LABOR COMMISSION

HOPE L. POTTENGER,

Petitioner,

vs.

IHC RISK MANAGEMENT,

Respondent.

**ORDER DENYING
MOTION FOR REVIEW**

Case No. 20031007

Hope L. Pottenger asks the Utah Labor Commission to set aside Administrative Law Judge Marlowe's decision on her claim against IHC Risk Management ("IHC") under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On December 30, 2005, Judge Marlowe issued her decision on Ms. Pottenger's claim for workers' compensation benefits. As required by the Utah Administrative Procedures Act ("UAPA"), Title 63, Chapter 46b, Utah Code Annotated, the decision included a "Notice of Appeals Rights" informing Ms. Pottenger that she could appeal the decision by filing a motion for review "within 30 days from the date this decision is signed." Any objections were due within 30 days and, in fact, IHC filed such an objection, which resulted in a supplemental order on March 8, 2006. This final order also provided "Notice of Appeals Rights."

The Commission received Ms. Pottenger's motion for review on June 9, 2006. Because her motion for review was submitted after the 30-day appeal period had expired, the threshold issue before the Commission is whether it has jurisdiction to consider the merits of the motion for review.

DISCUSSION AND CONCLUSION OF LAW

Section 63-46b-12 of UAPA and Section 34A-2-801 of the Utah Workers' Compensation Act allows a party dissatisfied with an ALJ's decision 30 days in which to file a motion for review with the Labor Commission. Unless a motion for review is timely filed, the ALJ's decision is final and not subject to further review. See § 34A-2-801(2).

In this case, Ms. Pottenger's motion for review was received 93 days after Judge Marlowe's final decision was issued. Regardless of Ms. Pottenger's argument that her counsel was ineffective in litigating her claim, she still was required to file this and any other argument in a timely motion for review. The Commission concludes it has no jurisdiction to consider the motion for review.

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ORDER

The Commission dismisses Ms. Pottenger's motion for review as untimely. The prior decision of the ALJ remains in effect. It is so ordered.

Dated this 26th day of November, 2008.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.